

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MACKENNETH ORTIZ,)	
)	
Plaintiff,)	2:22-cv-928-NR-PLD
)	
v.)	
)	
LEE ESTOCK, et al.,)	
)	
Defendants.)	

ORDER ADOPTING REPORT & RECOMMENDATION (ECF 49)

Plaintiff MacKenneth Ortiz is an inmate presently incarcerated at the State Correctional Institute at Houtzdale. Mr. Ortiz filed a complaint in the Court of Common Pleas of Indiana County in April 2021, challenging the treatment he received while incarcerated and claiming that he was subjected to retaliation. ECF 1-2. That complaint was subsequently removed to this Court. ECF 1. Mr. Ortiz names three Defendants in his complaint: (1) Lee Estock, the Warden of SCI Pine Grove, which is where he was previously incarcerated; (2) Deputy Superintendent Yingling; and (3) Wellpath, a medical provider. ECF 1-2.

Defendants filed motions to dismiss Mr. Ortiz's claims. ECF 9; ECF 24. Before the Court is Magistrate Judge Patricia L. Dodge's Report and Recommendation (ECF 49), recommending that the Court grant both motions, dismiss Mr. Ortiz's claims without prejudice, and grant him leave to amend. Mr. Ortiz filed timely objections to Judge Dodge's R&R. ECF 51. Those objections, however, did not go to the merits of Judge Dodge's recommendation, and instead focused on issues irrelevant to the pending motions. *Id.*

After carefully considering the record and upon a *de novo* review of the R&R, the Court overrules Mr. Ortiz's objections, and adopts Judge Dodge's R&R as the opinion of the Court. *See, e.g., United States v. Raddatz*, 447 U.S. 667, 676 (1980)

(“[I]n providing for a ‘de novo determination’ ... Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate’s proposed findings and recommendations.” (cleaned up)); *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (“[I]t must be assumed that the normal practice of the district judge is to give some reasoned consideration to the magistrate’s report before adopting it as the decision of the court. When a district court does accept the Magistrate’s report, that is a judicial act, and represents the district court’s considered judgment.” (cleaned up)).

Therefore, this **13th day of December, 2022**, it is **ORDERED** that the motions to dismiss filed by Defendants (ECF 9; ECF 24) are hereby **GRANTED**, and Mr. Ortiz’s claims are dismissed without prejudice. Because, for the reasons stated by Judge Dodge, the Court cannot state with certainty that Mr. Ortiz would be unable to plead any viable claim, he is granted leave to amend. Any amendment must be consistent with the instructions in Judge Dodge’s R&R.

Mr. Ortiz must file any amended complaint by no later than **January 13, 2022**. Failure to do so will result in all his claims being dismissed with prejudice.

BY THE COURT:

/s/ J. Nicholas Ranjan
United States District Judge